

ESTTA Tracking number: **ESTTA693972**

Filing date: **09/04/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91220652
Party	Defendant Sisters of Charity of Leavenworth Health System, Inc.
Correspondence Address	JAMES R HASTINGS COLLEN IP THE HOLYOKE-MANHATTAN BUILDING, 80 SOUTH HIGHLAND AVENUE OSSINING, NY 10562 UNITED STATES jhastings@collenip.com, gdavis@collenip.com, docket@collenip.com
Submission	Motion to Suspend for Civil Action
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Filer's e-mail	gdavis@collenip.com, jhastings@collenip.com, docket@collenip.com
Signature	/Govinda M. Davis/
Date	09/04/2015
Attachments	R347 Motion to Suspend Pending Civil Litigation & Exhibit.pdf(1904102 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BLUE CROSS AND BLUE SHIELD
ASSOCIATION

Opposer/Counterclaim
Respondent,

v.

SISTERS OF CHARITY OF
LEAVENWORTH HEALTH SYSTEM, INC.,

Applicant/Counterclaim
Petitioner.

Opposition No.: 91220652

Application No.: 86233170

MOTION TO SUSPEND FOR CIVIL ACTION

Applicant/Counterclaim Petitioner, Sisters of Charity of Leavenworth Health System, Inc., hereby moves the Board, pursuant to 37 C.F.R. § 2.117 and TBMP 510.02(a), to suspend the above-captioned Opposition proceeding pending the conclusion of *Sisters of Charity of Leavenworth Health System, Inc. v. Blue Cross Blue Shield Association, Inc.*, Civil Action No: 15-cv-01895 filed on September 1, 2015. This litigation is currently pending before the United States District Court for the District of Colorado.

The pending civil litigation involves the same parties as this proceeding and involves litigation of the trademarks that are at issue in this proceeding. Resolution of the District Court litigation may impact rights pertaining to the contested application and registration(s) currently at

issue before the Board. A copy of the Complaint filed in Civil Action No. 15-cv-01895 is attached hereto as “Exhibit A” for the Board’s consideration.

Therefore, Applicant/Counterclaim Petitioner respectfully requests that this Opposition Proceeding be suspended pending the outcome of the above-mentioned federal litigation.

Respectfully submitted,

By: /James R. Hastings/
James R. Hastings
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Applicant/Counterclaim Respondent

Dated: September 4, 2015

CERTIFICATE OF FILING AND SERVICE

I, Govinda M. Davis, hereby certify that on September 4, 2015, the above **Motion to Suspend** was electronically filed with the Trademark Trial and Appeal Board and served by First Class Mail, postage prepaid, to Opposer/Counterclaim Respondent's Attorney of Record at the following address:

Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, CA 94105
Attention: Mr. Garner K. Weng

A handwritten signature in black ink, appearing to read "Govinda M. Davis", is written over a horizontal line.

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.

SISTERS OF CHARITY OF LEAVENWORTH HEALTH SYSTEM, INC.,
Plaintiff,

v.

BLUE CROSS AND BLUE SHIELD ASSOCIATION, INC.,
Defendant.

COMPLAINT

Plaintiff Sisters of Charity of Leavenworth Health System, Inc. ("SCL Health"),
complaining of Defendant Blue Cross and Blue Shield Association, Inc. ("BCBS
Association"), alleges:

NATURE OF ACTION

1. In this action, Plaintiff SCL Health seeks a declaratory judgment that the trademark it uses to designate the origin of its various hospitals, clinics and other healthcare facilities does not infringe or dilute any valid trademark of Defendant BCBS Association. SCL Health further seeks an Order cancelling Defendant's U.S. Trademark Reg. No. 554,817 of a Cross Design on the grounds of abandonment.

THE PARTIES

2. SCL Health is a not-for-profit corporation organized under the laws of the State of Kansas and maintains its principal place of business at 500 Eldorado Boulevard, Suite 4300, Broomfield, Colorado 80021.

3. Upon information and belief, Defendant BCBS Association is an Illinois not-for-profit corporation and maintains its principal place of business at 225 North Michigan Avenue, Chicago, Illinois 60601.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338, and pursuant to 15 U.S.C. § 1119.

5. Venue in this Judicial District is proper under 28 U.S.C. § 1391(b)(2), since, as hereinafter alleged, a substantial part of the events giving rise to SCL Health's claims occurred within this Judicial District.

FACTS

A. SCL Health

6. SCL Health is a faith based, not-for-profit healthcare organization that operates eight hospitals, four "safety net" clinics, a children's mental health center, and more than 190 ambulatory service centers within Colorado, Kansas and Montana. Based in Broomfield, Colorado, SCL Health is dedicated to improving the health of the communities and individuals it serves, especially those who are poor and vulnerable.

7. SCL Health enjoys an outstanding reputation for providing high quality health care services to consumers in this District and elsewhere. *In 2015, Becker's Hospital Review*, a leading healthcare publication, included SCL Health in the first-ever list of *50 Great Health Systems to Know in the U.S.* The list was compiled by the publication's editorial team and includes other well-known health systems such as the Mayo Clinic and Johns Hopkins.

8. Like thousands of other Christian-founded health and medical service providers, SCL Health has used the symbol of the cross to denote its Christian heritage and holistic approach to health care and spiritual well-being.

9. Upon information and belief, there are currently hundreds of active trademarks registered on the Principal Register of the United States Patent and Trademark Office (“PTO”) that contain a Cross design in association with medical and/or health care related goods and services.

10. In or about 1976, SCL Health adopted and commenced using a trademark consisting of a heart superimposed on a cross (SCL Health’s “Legacy Heart and Cross Mark”) to designate the origin of the health care services provided by SCL Health. The Legacy Heart and Cross Mark is reproduced below:



11. SCL Health has used the Legacy Heart and Cross Mark continuously since 1976 – a period of nearly 40 years.

12. SCL Health owns a registration of its Legacy Heart and Cross Mark on the Principal Register of the PTO for health care and hospital services, Reg. No. 1,766,130 (Exhibit 1). The registration is valid, subsisting, in full force and effect and has become incontestable pursuant to 15 U.S.C. § 1065.

B. BCBS Association

13. Upon information and belief, BCBS Association is a national federation of 36 independently owned and operated insurance companies ("BCBS Member Insurance Companies," each a "BCBS Member Insurance Company").

14. Upon information and belief, BCBS Association owns and licenses to BCBS Member Insurance Companies various word and design marks – some of which are registered on the Principal Register of the PTO. BCBS Association's marks include the words BLUE CROSS and/or BLUE SHIELD; a logo consisting of a styled representation of the so-called Vitruvian Man superimposed on a cross (the "Blue Cross Logo"); and a logo consisting of serpent and the staff of the ancient Greek god of medicine, Asclepius, superimposed on a shield (the "Blue Shield Logo").

15. Upon information and belief, each BCBS Member Insurance Company offers health insurance policies under the "Blue Cross" and/or "Blue Shield" name, in combination with other source-identifying indicia, to employers and individuals within a given geographic territory. For example, the name of the insurance company that issues health insurance policies to residents of Colorado under the "Blue Cross-Blue Shield" name is Colorado Rocky Mountain Hospital and Medical Service, Inc. (which operates under the trade name "Anthem").

16. Upon information and belief, in order for a given hospital, clinic, laboratory or other healthcare provider to receive payment for the services it renders to consumers with insurance issued by a BCBS Member Insurance Company, the provider must be

party to a so-called “Facility Payor Agreement” with BCBS Association and/or with a BCBS Member Insurance Company, such as Anthem.

17. For at least the past 40 years, SCL Health has been a party to numerous Facility Payor Agreements with different BCBS Member Insurance Companies, including Anthem.

18. BCBS Association has long-recognized SCL Health for its expertise in delivering specialty care to SCL Health’s patients by designating various SCL Health facilities “Blue Distinction Center” facilities.

19. Until or about September 1, 2015, various SCL Health facilities had Blue Distinction Center designations, at which time SCL Health gave formal notice to BCBS Association of SCL Health’s intention to terminate its affiliation with the Blue Distinction Center program.

C. The Parties’ Dispute

20. In 2014, SCL Health updated and modernized its Legacy Heart and Cross Mark (SCL Health’s “Updated Heart and Cross Mark”). SCL Health predominantly uses its Updated Heart and Cross Mark either in combination with the SCL Health name and/or with the names of other SCL Health facilities in connection with the marketing of its services, as shown in the representative examples depicted in Exhibit 2.

21. In March 2014, SCL Health filed Application No. 86/233,170 to register the Updated Heart and Cross Mark as a service mark on the PTO’s Principal Register for various health-related services (Exhibit 3).

22. Thereafter, and as particularized below, BCBS Association has made it known to SCL Health that it (BCBS Association) objects to the Updated Heart and Cross Mark on the ground that part of SCL Health's updated mark contains, in part, a shade of blue. Through various statements, innuendoes, and outright threats, BCBS Association has asserted that the Updated Heart and Cross Mark infringes BCBS Association's trademark rights and dilutes the distinctive value of the Blue Cross Logo and Blue Shield Mark and has demanded that SCL Health cease using the Updated Heart and Cross Mark in combination with any blue color elements.

23. Upon information and belief, BCBS Association has had constructive notice of SCL Health's use and registration of its Legacy Heart and Cross Mark since as early as 1976.

24. Upon information and belief, BCBS Association has never once legally challenged SCL Health's use or registration of the Legacy Heart and Cross Mark.

25. BCBS Association has admitted that SCL Health's Updated Heart and Cross Mark is "virtually identical" to SCL Health's Legacy Heart and Cross Mark.

26. In an email dated February 12, 2015 addressed to SCL Health (Exhibit 4), outside counsel for BCBS Association stated that his client needed "to protect its rights in its famous Blue Cross word and design marks" in light of SCL Health's "recent adoption of the cross design at issue." Toward that end, counsel for BCBS Association demanded that SCL Health discontinue using the color blue within the Updated Heart and Cross Logo – stating that SCL Health should consider "transitioning to a color other than blue of its cross mark." The February 12, 2015 email also stated "[t]he Blue Cross

marks [of BCBS Association] have been enforced in the context of health care providers in the past,” a clear warning to SCL Health that BCBS Association was prepared to initiate litigation against SCL Health.

27. On February 17, 2015, BCBS Association filed an Opposition Proceeding against SCL Health in the PTO’s Trademark Trial and Appeal Board objecting to SCL Health’s Application No. 86/233,170 to register the Updated Heart and Cross Logo (Exhibit 5), citing as the basis of its Opposition BCBS Association’s alleged rights in and to various federal trademark registrations and common law marks (Exhibit 5, ¶¶ 7 and 8; Exhibit A). BCBS Association’s Notice of Opposition (Exhibit 5, ¶ 9) objects to registration of the Updated Heart and Cross Logo on the ground that “Applicant’s Mark is . . . likely to confuse, cause mistake among, or deceive the relevant public into believing that Applicant and Applicant’s goods or services are . . . in some way associated with the services of” BCBS Association.

28. BCBS Association’s Notice of Opposition specifically objects to SCL Health’s *use* of the Updated Heart and Cross Logo: “Registration ***and use*** of Applicant’s Mark is likely to impair and has impaired the distinctiveness of the Blue Marks, and in particular the Blue Cross Marks. Such . . . use would and does weaken the ability of such marks to identify and distinguish the goods and services of” BCBS Association. Exhibit 5, ¶ 11 (emphasis added).

29. In its Answer, Affirmative Defenses, and Counterclaims to BCBS Association’s Notice of Opposition, SCL Health asserted that BCBS Association had unclean hands in asserting that BCBS Association had valid and enforceable trademark

rights in certain U.S. trademark registrations because, in fact, BCBS Association owned no such rights. SCL Health therefore sought cancellation of five BCBS Association registrations relied on by BCBS Association in its Notice of Opposition.

30. Thereafter, in April 2015, the PTO cancelled four of BCBS Association's registrations identified in SCL Health's Counterclaims, namely, U.S. Reg. Nos. 1,632,320 of a Cross Design; 1,639,079 of a Cross Design; 3,506,616 of BLUE DISTINCTION PROVIDER MEASUREMENT AND IMPROVEMENT PROGRAM; and 3,506,617 of BLUE DISTINCTION PROVIDER MEASUREMENT AND IMPROVEMENT PROGRAM. SCL Health's counterclaim to cancel BCBS Association's U.S. Reg. No. 554,817 of its Blue Cross design mark for "distribution of hospital care on a pre-payment financing basis" (i.e., insurance services) in International Class 036 on the grounds of abandonment remains pending before the U.S. Trademark Trial and Appeal Board.

31. In an email to SCL Health dated June 17, 2015 (Exhibit 6), an attorney from BCBS Association's General Counsel's office warned SCL Health that BCBS Association "has a duty and great desire to protect its marks from dilution and likelihood of confusion." She stated that there were "numerous SCL [Health] hospitals . . . currently under evaluation" to receive designations as Blue Distinction Centers and that these institutions, if they are found to be using the Updated Heart and Cross Logo, "will be deemed ineligible for these designation until the parties are unable [sic] to resolve this matter."

32. Thereafter, on June 26, 2015 the same in-house attorney from BCBS Association and BCBS Association's Vice President of Consumer Brand Strategy spoke

with an in-house counsel for SCL Health. During that call, BCBS Association's representatives demanded that SCL Health discontinue using the Updated Heart and Cross Logo in combination with any shade of blue, which, according to BCBS Association's in-house attorney, would require SCL Health having to replace everything from exterior signage to employee badges that contain the Updated Heart and Cross Logo.

33. During the June 26, 2015 conversation, BCBS Association's representatives also stated that, unless SCL Health withdraw its claims and defenses in the trademark opposition proceeding before the U.S. Trademark Trial and Appeal Board, BCBS Association would terminate all existing payor relationships (Facility Payor Agreements) with SCL Health; would terminate all existing Blue Distinction Center relationships with SCL Health; and would never again undertake a commercial relationship of any sort with SCL Health.

34. If BCBS Association were to make good on its threat and seek to terminate or interfere with Facility Payor Agreements with SCL Health, patients insured by BCBS Association members and receiving healthcare from SCL Health care sites would face greatly increased out-of-pocket costs from BCBS Association members or would be denied benefits entirely. This would result not only in substantially decreased revenues to SCL Health but in patient hardship, especially in those geographic areas where SCL Health is a principal healthcare provider or where patients have established healthcare relationships with SCL Health physicians and hospitals.

FIRST CAUSE OF ACTION
Declaratory Judgement of Non-Infringement and Non-Dilution

35. SCL Health repeats and realleges the allegations set forth in Paragraphs 1 through 34.

36. BCBS Association has accused SCL Health of violating its rights in any and all of the registered and common law trademarks contained in its Notice of Opposition – (Exhibit 5, ¶¶ 7 and 8; Exhibit A).

37. An actual case and controversy exists between the parties over whether SCL Health’s registration and use of the Updated Heart and Cross Mark infringes any valid registered and/or common law trademark of BCBS Association in violation of 15 U.S.C. § 1114(1), or constitutes a false designation of origin in violation of 15 U.S.C. § 1125(a).

38. An actual case and controversy exists between the parties over whether SCL Health’s registration and use of the Updated Heart and Cross Mark dilutes the distinctive value of any trademark owned by BCBS Association in violation of 15 U.S.C. § 1125(c).

39. SCL Health has no adequate remedy at law.

SECOND CAUSE OF ACTION
Cancellation of Federal Trademark Registration

40. SCL Health repeats and realleges the allegations set forth in Paragraphs 1 through 39.

41. This is an action “involving a registered mark” within the meaning of 15 U.S.C. § 1119.

42. As grounds for its Notice Of Opposition, BCBS Association is relying on, *inter alia*, its alleged rights in and to U.S. Registration No. 554817 depicting a design mark of a Cross (hereinafter the “‘817 Registration”). Exhibit 5, ¶¶ 7 and 8; Ex. A.

43. The services that are the subject of the ‘817 Registration are “distribution of hospital care on a pre-payment financing basis” in International Class 036.

44. On or about December 7, 2011, BCBS Association caused to be filed with the United States Patent and Trademark Office a document entitled, *Combined Declaration of Use and/or Excusable Non-Use and Application for Renewal of Registration of a Mark Under Sections 8 and 9*, as it relates to ‘817 Registration (hereinafter the “Section 8 and 9 Declaration”).

45. In support of its Section 8 and 9 Declaration filed with the PTO, BCBS Association submitted specimens of use allegedly evidencing use of the ‘817 Registration in commerce in connection with all of the goods listed in the subject registration, “consisting of a(n) marketing materials on licensee’s website.”

46. The specimen submitted in connection with BCBS Association’s Section 8 and 9 Declaration filed in connection with the ‘817 Registration does not depict BCBS Association’s Cross design mark anywhere on the specimen as used in association with the registered services.

47. Upon information and belief, at the time it submitted its Section 8 and 9 Declaration on or about December 7, 2011, BCBS Association knew that the Cross design mark that is the subject of the ‘817 Registration was not being used in a *bona*

fide manner in the ordinary course of trade in commerce and/or in connection with the specimens.

48. Upon information and belief, at the time it submitted its Sections 8 and 9 to the PTO, BCBS Association had not used the Cross design mark for a period of at least three consecutive years.

49. Alternatively, upon information and belief, at the time it filed its Section 8 and 9 Declaration with the PTO, BCBS Association had discontinued using the Cross design mark and did not have an intent to resume use of that mark.

50. Upon information and belief, BCBS Association has abandoned its rights in and to the '817 Registration pursuant to 15 U.S.C. Section 1127.

51. By reason of the foregoing, U.S. Registration No. 554,817 should be cancelled.

52. SCL Health has no adequate remedy at law.

JURY DEMAND

53. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, SCL Health demands trial by jury as to all issues properly so tried.

PRAYER FOR RELIEF

WHEREFORE, SCL Health prays that this Court grant it the following relief:

A. Pursuant to 28 U.S.C. § 2201, a Judicial Declaration that the Updated Heart and Cross Logo does not infringe any trademark of BCBS Association, and does not dilute the distinctive value of any trademark of BCBS Association.

B. Pursuant to 15 U.S.C. §§ 1064 and 1119, a judgment directing the Commissioner of Patents and Trademarks to cancel BCBS Association's Trademark Reg. No. 554,817, on the ground that BCBS Association has abandoned its rights in and to the trademark registration.

C. Pursuant to 28 U.S.C. § 2202 and 15 U.S.C. § 1117(a), a judgment awarding SCL Health reasonable attorney's fees and the costs of this action.

D. Such other and further relief as the Court may deem necessary, just and proper.

Dated: September 1, 2015

Respectfully submitted,

s/ Kathryn A. Reilly

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*Attorneys for Plaintiff Sisters Of Charity Of
Leavenworth Health System, Inc.*

EXHIBIT 1



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Goods and Services

IC 035. US 101. G & S: hospital management services; medical referral services. FIRST USE: 19761200. FIRST USE IN COMMERCE: 19770210

IC 042. US 100. G & S: health care and hospital services; medical assistance, counselling, medical information services; medical laboratory services; home health care, nursing, outpatient and medical clinic services; hospice services; mental health services. FIRST USE: 19761200. FIRST USE IN COMMERCE: 19770210

Mark Drawing Code

(2) DESIGN ONLY

Design Search Code

02.11.01 - Hearts excluding hearts as carriers or depicted on playing cards
24.13.02 - Cross, Greek (equal sides); Greek cross (equal sized lines)

Serial Number

74162445

Filing Date

April 30, 1991

Current Basis

1A

Original Filing Basis

1A

Published for Opposition

December 17, 1991

Registration Number

1766130

Registration Date

April 20, 1993

Owner

(REGISTRANT) SISTERS OF CHARITY OF LEAVENWORTH HEALTH SERVICES CORPORATION CORPORATION KANSAS 2420 West 26th Avenue, Suite 300-D Denver COLORADO 80211

Assignment Recorded

ASSIGNMENT RECORDED

Attorney of Record Carl Baranowski
Description of Mark The mark consists of a Roman cross and a heart superimposed upon a Greek cross.
Type of Mark SERVICE MARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20130409.
Renewal 2ND RENEWAL 20130409
Live/Dead Indicator LIVE

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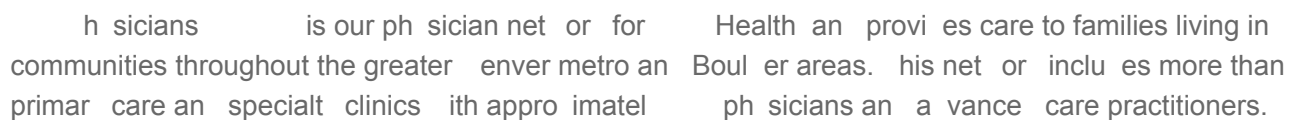


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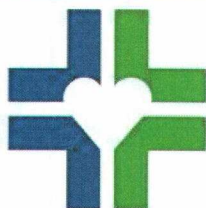
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**Goods and Services**

IC 035. US 100 101 102. G & S: Hospital administration services; Hospital management. FIRST USE: 20140301. FIRST USE IN COMMERCE: 20140301

Mark Drawing Code

IC 044. US 100 101. G & S: Health care; Hospitals. FIRST USE: 20140301. FIRST USE IN COMMERCE: 20140301

(2) DESIGN ONLY

Design Search Code02.11.01 - Hearts excluding hearts as carriers or depicted on playing cards
24.13.02 - Cross, Greek (equal sides); Greek cross (equal sized lines)**Serial Number**

86233170

Filing Date

March 26, 2014

Current Basis

1A

Original Filing Basis

1A

Published for Opposition

August 19, 2014

Owner

(APPLICANT) SISTERS OF CHARITY OF LEAVENWORTH HEALTH SYSTEM, INC. CORPORATION KANSAS 2420 West 26th Avenue, Suite 100-D Denver COLORADO 80211

Attorney of Record

Carl Baranowski

Prior Registrations

1766130

Description of Mark

The color(s) blue, green and white is/are claimed as a feature of the mark. The mark consists of a white heart centered over a blue and green Greek (equal-length lines) cross. The left half of the cross is blue and the right half of the cross is green. Each cross line is evenly split by a white line. The white lines of the cross join the heart in the center. The blue and green lines of the cross surround and define the heart in the center.

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Live/Dead Indicator

LIVE

[TESS HOME](#) | [NEW USER](#) | [STRUCTURED](#) | [FREE FORM](#) | [BROWSE DICT](#) | [SEARCH OG](#) | [Top](#) | [HELP](#)
[HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)

EXHIBIT 4

From: [Christopher S. Walters <CWalters@hansonbridgett.com>](mailto:CWalters@hansonbridgett.com)

To: carl@baranowski.com

Date: 2/12/2015 3:51:11 PM

Subject: Sisters_of_Charity_--_U.S._Application_Ser._No._86233170

Attachments: BDC_Bariatric_Par_Agr-v6-BCBSA_clean-Sept_26_2014_Form.pdf

Dear Carl,

I write to follow up on our conversations about the above-referenced application. Our client has been seriously evaluating the position you have laid out on behalf of Sisters of Charity. Upon very careful consideration and much deliberation, Blue Cross and Blue Shield Association would like your client to re-consider transitioning to a color other than blue for its cross mark.

This request is made, as we have discussed, in light of our client's need to protect its rights in its famous Blue Cross word and design marks and also in light of your client's recent adoption of the cross design at issue. The Blue Cross marks have been enforced in the context of health care providers in the past. Furthermore, but just as importantly, our client's Blue Distinction Center agreements do not permit contracting hospitals to use designs or images of crosses containing the color blue as trademarks. In case you have not seen these agreements, I attach a generic one for reference. It is my understanding that Great Plains Health has applied for Blue Distinction Center status.

As I believe I've mentioned, the Association would certainly be willing to allow your client a reasonably transition period to minimize costs. In the past, we have succeeded in eliminating or nearly eliminating unexpected costs through appropriate phase-out periods.

Please let me know if you would like additional information before taking this to your client.

Best regards,
Chris

Christopher S. Walters

Attorney

Hanson Bridgett LLP

(415) 995-5017 Direct

(415) 995-3589 Fax

cwalters@hansonbridgett.com

 <http://remote.hbmvr.com/imag>



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EXHIBIT 5

Trademark Trial and Appeal Board Electronic Filing System. <http://estta.uspto.gov>ESTTA Tracking number: **ESTTA656328**Filing date: **02/17/2015**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Blue Cross and Blue Shield Association
Granted to Date of previous extension	02/15/2015
Address	225 North Michigan Avenue Chicago, IL 60601 UNITED STATES

Attorney information	Garner K. Weng Hanson Bridgett LLP 425 Market Street, 26th Floor San Francisco, CA 94105 UNITED STATES ttabfilings@hansonbridgett.com, gweng@hansonbridgett.com, cwal- ters@hansonbridgett.com, soneill@hansonbridgett.com, jthompson@hansonbridgett.com Phone:415/995-5081
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Applicant Information

Application No	86233170	Publication date	08/19/2014
Opposition Filing Date	02/17/2015	Opposition Period Ends	02/15/2015
Applicant	SISTERS OF CHARITY OF LEAVENWORTH HEALTH SYSTEM, INC. 2420 West 26th Avenue, Suite 100-D Denver, CO 80211 UNITED STATES		

Goods/Services Affected by Opposition


Class 035. First Use: 2014/03/01 First Use In Commerce: 2014/03/01 All goods and services in the class are opposed, namely: Hospital administration services; Hospital management
Class 044. First Use: 2014/03/01 First Use In Commerce: 2014/03/01 All goods and services in the class are opposed, namely: Health care; Hospitals

Grounds for Opposition


Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)


Marks Cited by Opposer as Basis for Opposition

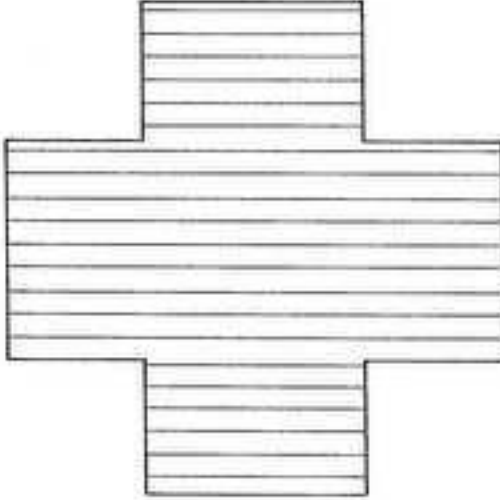
U.S. Registration No.	554817	Application Date	08/19/1947
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Registration Date	02/12/1952	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 1934/12/00 First Use In Commerce: 1934/12/00 DISTRIBUTION OF HOSPITAL CARE ON A PRE-PAYMENT FINANCING BASIS		


U.S. Registration No.	969385	Application Date	12/05/1972
Registration Date	09/25/1973	Foreign Priority Date	NONE
Word Mark	NONE		


Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 1972/11/09 First Use In Commerce: 1972/11/09 PREPAID FINANCING OF HOSPITAL AND HEALTH CARE SERVICES		

U.S. Registration No.	990414	Application Date	03/01/1973
Registration Date	08/06/1974	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 1972/11/09 First Use In Commerce: 1972/11/09 PRE-PAID FINANCING OF HOSPITAL AND HEALTH CARE SERVICES		


U.S. Registration No.	1699627	Application Date	07/22/1991
Registration Date	07/07/1992	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1988/06/28 First Use In Commerce: 1988/06/28 health care services rendered through ahealth maintenance organization; namely, physician services, dental services, hospital services, home health care services, preventative health care services, health care services, medical lab services, counselling services in the field offamily planning, mental health servicesand pharmacy services		

U.S. Registration No.	3172396	Application Date	03/31/2005
Registration Date	11/14/2006	Foreign Priority Date	NONE
Word Mark	NONE		


Design Mark	
Description of Mark	NONE
Goods/Services	Class 036. First use: First Use: 1997/04/01 First Use In Commerce: 1997/04/01 Administration, financial management and maintenance of health savings accounts, medical savings accounts, and flexiblespending accounts; insurance claims administration

U.S. Registration No.	3313851	Application Date	08/26/2005
Registration Date	10/16/2007	Foreign Priority Date	NONE
Word Mark	BLUE DISTINCTION		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use: First Use: 2006/06/05 First Use In Commerce: 2006/06/05 Assessing healthcare service provider performance, providing centers for excellence programs, providing specialty care centers, namely, conducting a quality measurement, improvement and assurance surveys in hospitals to determine service quality</p> <p>Class 036. First use: First Use: 2006/06/05 First Use In Commerce: 2006/06/05 Organization and administration of pre-paid, preferred provider organization,</p>		

	health maintenance organization, exclusive provider organization, and point of service healthcare plans Class 044. First use: First Use: 2006/06/05 First Use In Commerce: 2006/06/05 Healthcare services and comprehensive healthcare benefits programs, including those rendered through a health maintenance organization and preferred provider organization, namely physician, dental, hospital, home health care, preventative healthcare treatment, physical therapy and dispensing of pharmaceuticals services; Healthcare consulting services
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U.S. Registration No.	3709586	Application Date	03/28/2008
Registration Date	11/10/2009	Foreign Priority Date	NONE
Word Mark	BLUECROSS BLUESHIELD ASSOCIATION AN ASSOCIATION OF INDEPENDENT BLUE CROSS AND BLUE SHIELD PLANS LEADING THE FUTURE OF HEALTHCARE		
Design Mark	 BlueCross BlueShield Association An Association of Independent Blue Cross and Blue Shield Plans Leading the future of healthcare		
Description of Mark	The mark consists of a cross design encasing a stylized design of the vitruvian-man and a shield design containing the staff of Asclepius with the words to theright "BlueCross BlueShield Association" and below the words "An Association ofIndependent Blue Cross and Blue Shield Plans" and below and under all the words"Leading the future of healthcare".		
Goods/Services	Class 036. First use: First Use: 2008/04/01 First Use In Commerce: 2008/04/01 prepaid financing and administration ofhospital, medical and health care services Class 044. First use: First Use: 2008/04/01 First Use In Commerce: 2008/04/01 healthcare services, provided through preferred provider programs and health maintenance organizations		

U.S. Registration No.	4074287	Application Date	06/15/2011
Registration Date	12/20/2011	Foreign Priority Date	NONE
Word Mark	BLUE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 044. First use: First Use: 2003/06/03 First Use In Commerce: 2003/06/03 Providing on-line information, news and commentary in the field of health and wellness relating to health plans, health support, fitness, nutrition and self care

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	A family of BLUE marks, BLUE CROSS marks, and marks consisting of or including an image of a cross design (registered and common law), as further described in the Notice of Opposition		
Goods/Services	A range of goods and services relating to health care, health care plans, and insurance, as further described in the Notice of Opposition		

Attachments	71531753#TMSN.png(bytes) 72442919#TMSN.png(bytes) 72450146#TMSN.png(bytes) 74187033#TMSN.png(bytes) 78598844#TMSN.png(bytes) 78701074#TMSN.png(bytes) 77434198#TMSN.png(bytes) 85346475#TMSN.png(bytes) Sisters of Charity - Ntc of Opp.pdf(31126 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/gkw/
Name	Garner K. Weng
Date	02/17/2015

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

IN RE: APPLICATION SERIAL NO. 86/233,170

BLUE CROSS AND BLUE SHIELD
ASSOCIATION,

Opposer,

v.

SISTERS OF CHARITY OF LEAVENWORTH
HEALTH SYSTEM, INC.,

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

Opposer Blue Cross and Blue Shield Association, a not-for-profit membership-based corporation organized and existing under the laws of the State of Illinois, doing business at 225 North Michigan Avenue, Chicago, IL 60601-7680, brings this Opposition against Application Serial No. 86/233,170, filed by Applicant Sisters of Charity of Leavenworth Health System, Inc., having an address of 2420 West 26th Avenue, Suite 100-D, Denver, CO 80211.

1. On March 26, 2014, Sisters of Charity of Leavenworth Health System, Inc. ("Applicant") filed Application Serial No. 86/233,170 ("Application") under Section 1(a) of the Lanham Act. The Application was published in the U.S. Patent & Trademark Office's *Official Gazette* on August 19, 2014. The Application on its face seek to cover the following services: "Hospital administration services; Hospital management," in International Class 35 and "Health care; Hospitals," in International Class 44. The Application describes the subject mark ("Applicant's Mark") as including a Greek cross in the color blue. Likewise, the design codes assigned to Applicant's Mark include codes for "Greek cross." In sum, Applicant's Mark specifically encompasses a Greek cross design containing the color blue.

2. Opposer Blue Cross and Blue Shield Association (“Association”) is a national association of 37 independent, community-based, and locally operated BLUE CROSS® and BLUE SHIELD® companies (“Member Plans”). The Association represents the nation’s oldest and largest family of health benefits companies. For over 80 years, the Association (including through its predecessors in interest and its Member Plans and licensees) has provided tens of millions of families with top-quality affordable health care plans. The Association’s Member Plans currently provide health care plans for nearly 105 million people in the United States—or about 1 in 3 Americans—and offer health care plans in all 50 states, the District of Columbia, and in Puerto Rico. More than 96% of hospitals and 92% of physicians in the United States contract with the Association’s Member Plans—more than any other insurer. The Association’s Member Plans currently have local and national presence in 75% of all Fortune 500 companies and 86% of all Fortune 100 companies.

3. The BLUE CROSS and BLUE SHIELD brands are among the most recognized in the health and health-related industries in the United States—and, indeed, in any industry. The Association is the owner of the BLUE CROSS design marks, as well as the BLUE CROSS word mark, the BLUE SHIELD word and design marks, and other marks consisting of the image of a blue cross or the image of a blue shield (or both). It licenses the use of various such marks to its Member Plans and other licensees for the provision of a wide variety of goods and services, including but not limited to health insurance, life insurance, dental insurance, vision insurance, disability insurance, long-term care insurance, workers' compensation insurance, health care delivery services, financial services, wellness services, health education, and other related goods and services. The Association (including through its predecessors in interest and its Member Plans and licensees) has been using these trademarks and service marks since at least as early as 1934 (BLUE CROSS) and 1939 (BLUE SHIELD).

4. In the United States alone, the Association currently owns approximately 221 valid and subsisting U.S. federal trademark and service mark registrations. Many of its U.S.

federal registrations have become incontestable under Section 15 of the Lanham Act. Additionally, the Association owns similar trademark and service mark registrations in more than 170 countries throughout the world. All of these (along with numerous trade names and common-law marks) form a “family” of BLUE trade names, trademarks, and service marks (“Blue Marks”). Under the Lanham Act, the Association’s incontestable U.S. federal registrations are conclusive evidence of the Association’s exclusive right to use or authorize the use of the Blue Marks in commerce.

5. The Association (including through its Member Plans and licensees) has extensively used, advertised, and promoted the Blue Marks throughout the United States. For instance, in past years, annual gross revenue under the Blue Marks has been on the order of \$360 billion. The Association (including through its Member Plans and licensees) spends millions of dollars in advertising and promoting its marks, services, products, and image, thereby creating substantial goodwill in the marketplace. As a result, the general public recognizes the Blue Marks separately and collectively as identifying the Association and its Member Plans and licensees—and the quality services they render. The Blue Marks are an asset of incalculable value to the Association and it has vigorously and successfully protected its marks. Moreover, at least as far back as 1977, federal district courts and other legal panels such as the World Intellectual Property Organization Uniform Dispute Resolution Policy Panel have expressly recognized the fame of the Blue Marks in the context of trademark disputes or litigation. In sum, the Blue Marks have long been famous; and the Blue Marks were famous long before Applicant’s adoption of, use of, or application to register Applicant’s Mark.

6. Among the Association’s Blue Marks are a wide range of marks consisting entirely or substantially of either the words BLUE CROSS or an image of a blue cross (or both) (the “Blue Cross Marks”). Historically and through the present, these Blue Cross Marks span a variety of differently-configured crosses. The Association (including through its predecessors in interest and its Member Plans and licensees) has used and does use the Blue Cross Marks in a

wide range of blue colors, from light to dark and through a variety of hues and tones. The Blue Cross Marks have long been famous; and the Blue Cross Marks were famous long before Applicant's adoption of, alleged use of, or application to register Applicant's Mark.

7. Several of the Association's U.S. federal trademark registrations for its Blue Marks and Blue Cross Marks are listed in Exhibit A hereto or identified as "Marks Cited by Opposer as Basis for Opposition" in Opposer's electronic submission of this Opposition, and are asserted as the basis for this opposition.

8. As further basis for this opposition, the Association asserts its rights in the marks consisting of or including an image of a cross design as shown in any of Opposer's registrations referenced above or consisting of or including the words BLUE CROSS in connection with the following goods and services for which use has been or is at common law: a broad range of health, insurance, medical, and related services, including without limitation health insurance services; health plan services; health care plan administration; health care management and consulting services; claims administration; dental insurance services; workers' compensation services; disability insurance services; life insurance services; long term care insurance services; health care services; medical services; health care delivery through medical clinics, physicians, biometric and wellness screening services, wellness programs, and nurse advice hotlines; assessing health care service provider performance; providing specialty care centers; providing centers-for-excellence programs in the field of health care; providing services for locating and connecting with health care providers and physicians; and conducting classes and seminars in the fields of health, fitness, diet/nutrition and lifestyle choices, and related educational services.

9. Applicant's Mark is confusingly similar to the Association's Blue Cross Marks. Among other things, Applicant's Mark is a Greek cross containing the color blue, and Applicant uses similar shades of blue in, and similar ways of presenting, the cross element of Applicant's Mark as the Blue Cross Marks. Overall, Applicant's Mark creates a confusingly similar commercial impression to the Association's Blue Cross Marks. Furthermore, the services listed

in the Application are identical to, similar to, overlap with, or are otherwise the type to be seen as emanating from the same source under a single mark as those goods or services designated by the Association's Blue Cross Marks. In sum, Applicant's Mark is therefore likely to confuse, cause mistake among, or deceive the relevant public into believing that Applicant and Applicant's goods and services offered in connection with Applicant's Mark are sponsored by, endorsed by, or in some manner related to the Association (or its Member Plans or licensees).

10. On information and belief, Applicant selected, adopted, began using and continues to use Applicant's Mark with full knowledge of the Association's Blue Cross Marks and Blue Marks, and with the intent to confuse, cause mistake among, and deceive the public into believing that Applicant's services are of the same high quality as, or are in some way associated with the services of the Association (or its Member Plans or licensees).

11. Registration and use of Applicant's Mark is likely to impair and has impaired the distinctiveness of the Blue Marks, and in particular the Blue Cross Marks. Such registration and use would and does weaken the ability of such marks to identify and distinguish the goods and services of the Association from Applicant and others.

12. Likewise, registration of Applicant's Mark, as described in the Application, will injure the Association by causing the relevant public to be confused, mistaken, or deceived to the detriment of the Association, by diluting the distinctive quality of the Association's famous Blue Cross Marks and Blue Marks, and by harming the reputation of the Association and its marks by associating them with Applicant.

13. For the reasons set forth in this Notice of Opposition, the Association believes that it will be damaged by the registration of Applicant's Mark in the Application. Accordingly, the Association requests and prays that the Application (and all parts of it) be denied registration.

14. In the alternative, should the Board find that the Application is entitled to registration in some form, under Section 18 of the Lanham Act, the Association requests that the Application be allowed registration only with the Application amended so that the colors

claimed are not and do not include the color blue (or any color with the commercial impression of blue).

The Association (through its counsel) hereby authorizes the requisite filing fee in the amount of \$600 to be charged to Hanson Bridgett LLP's U.S. Patent & Trademark Office Deposit Account No. 08-0630; and the Commissioner is further authorized to charge any deficiencies or other amounts due in connection with this filing to Deposit Account No. 08-0630.

Respectfully submitted,

BLUE CROSS AND BLUE SHIELD ASSOCIATION

By /s/ Garner K. Weng
Susan G. O'Neill, Esq.
Garner K. Weng, Esq.
Christopher S. Walters, Esq.
Janie L. Thompson, Esq.
Attorneys for Opposer
Blue Cross and Blue Shield Association

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E-mail: cwalters@hansonbridgett.com
E-mail: jthompson@hansonbridgett.com

Date: February 17, 2015

EXHIBIT A

EXHIBIT A

BCBSA FEDERAL REGISTRATIONS		
Mark	Reg. No.	International Classes of Goods or Services
BLUE-CROSS	554,488	IC 36
Blue Cross Design	554,817	IC 36
Blue Cross Design	969,385	IC 36
Blue Cross Design	990,414	IC 36
Blue Cross Design	1,055,560	IC 16
Blue Cross Design	1,293,243	IC 36
Blue Cross Design	1,422,665	IC 9
Blue Cross Design	1,425,238	IC 42
BLUE CROSS	1,426,942	IC 42
Blue Cross Design	1,632,320	IC 16
BLUE CROSS	1,632,573	IC 36
Blue Cross Design	1,639,079	IC 16
BLUE CROSS	1,691,498	IC 16
Blue Cross Design	1,699,627	IC 42
Blue Cross Design	1,763,481	IC 42
Blue Cross Design	1,826,582	IC 36
Blue Cross Design	1,997,328	IC 36
BLUE CROSS	2,027,402	IC 36
BLUE CROSS AND BLUE SHIELD ASSOCIATION	2,150,555	IC 36 IC 42
BLUE CROSS BLUE SHIELD ASSOCIATION	2,161,616	IC 16
Blue Cross Design	2,194,956	IC 36
Blue Cross Design	3,132,422	IC 25
Blue Cross Design	3,132,424	IC 18
Blue Cross Design	3,132,572	IC 21
Blue Cross Design	3,132,578	IC 16
Blue Cross Design	3,172,396	IC 36
Blue Cross Design	3,219,839	IC 28

BCBSA FEDERAL REGISTRATIONS		
Mark	Reg. No.	International Classes of Goods or Services
THE VALUE OF BLUE	3,148,694	IC 36 IC 44
Blue Cross Design	3,219,839	IC 28
WALKING WORKS & Design	3,255,615	IC 41
BLUE CROSS	3,288,738	IC 36
Blue Cross Design	3,288,740	IC 36
BLUE DISTINCTION	3,313,851	IC 35 IC 36 IC 44
BLUE DISTINCTION CENTERS FOR TRANSPLANTS	3,478,216	IC 35 IC 44
BLUE DISTINCTION CENTERS FOR BARIATRIC SURGERY	3,478,217	IC 35 IC 44
BLUE DISTINCTION CENTERS FOR CARDIAC CARE	3,478,218	IC 35 IC 44
BLUE DISTINCTION HOSPITAL MEASUREMENT AND IMPROVEMENT PROGRAM	3,478,219	IC 35 IC 44
BLUE DISTINCTION CENTERS FOR SPECIALTY CARE	3,506,602	IC 35 IC 36 IC 44
BLUE DISTINCTION CENTERS	3,506,603	IC 35 IC 36 IC 44
BLUE DISTINCTION PROVIDER MEASUREMENT AND IMPROVEMENT PROGRAM	3,506,616	IC 35
BLUE DISTINCTION PROVIDER MEASUREMENT AND IMPROVEMENT PROGRAM	3,506,617	IC 44
BLUE 365 YOUR RESOURCE FOR LIVING HEALTHIER & BLUE CROSS DESIGN & Design	3,588,168	IC 35
BLUE DISTINCTION CENTERS FOR	3,677,329	IC 35

BCBSA FEDERAL REGISTRATIONS		
Mark	Reg. No.	International Classes of Goods or Services
COMPLEX AND RARE CANCERS		IC 44
BLUECROSS BLUESHIELD ASSOCIATION AN ASSOCIATION OF INDEPENDENT BLUE CROSS AND BLUE SHIELD PLANS LEADING THE FUTURE OF HEALTHCARE & Design	3,709,586	IC 36 IC 44
BLUECROSS BLUESHIELD VENTURE PARTNERS, L.P. AN INDEPENDENT LICENSEE OF THE BLUE CROSS AND BLUE SHIELD ASSOCIATION & Design	3,709,962	IC 36
BLUE DISTINCTION CENTER FOR SPINE SURGERY	3,794,451	IC 35 IC 44
BLUE DISTINCTION CENTERS FOR KNEE AND HIP REPLACEMENT	3,849,858	IC 35 IC 44
BLUE	4,111,938	IC 36

CERTIFICATE OF SERVICE

I, Laura Prongos, hereby certify that a true and complete copy of the foregoing NOTICE OF OPPOSITION to U.S. Trademark Application Serial No. 86/233,170 was served on the parties listed below by mailing said copies on February 17, 2015 via U.S. First Class Mail, postage pre-paid to:

Applicant's Attorney/Correspondent of Record:

Carl Baranowski
1601 Glen Ayr Drive
Lakewood, CO 80215

Dated: February 17, 2015

/s/ Laura Prongos

Laura Prongos

EXHIBIT 6

From: Barnhart, Emily

[<mailto:Emily.Barnhart@bcbsa.com><<mailto:Emily.Barnhart%40bcbsa.com>>]

Sent: Wednesday, June 17, 2015 6:04 AM

To: Carroll, Terrance

Subject: Blue Cross Blue Shield Association v. SCL Health System Trademark Matters - FRE 408 Communication

Mr. Carroll,

I am writing, before the parties expend a great deal of resources filing additional motions and litigating SCL's current trademark application before the TTAB, to set up a business to business call with SCL's in-house counsel and/or a business executive(s) and Blue Cross Blue Shield Association (with me and Cynthia Rolfe, VP of Consumer Brand Strategy) to discuss BCBSA's trademark concerns regarding SCL's recent adoption of its new blue cross logo. We believe a business call may be helpful in order to discuss in greater detail BCBSA's various concerns, as well as some historical and current relevant information.

At a high level, please note that BCBSA contacted SCL in 1992/1993 to provide actual notice regarding BCBSA's trademark rights and concern regarding SCL's cross mark, which resulted in Reg. No. 1,766,130. At that time, SCL's counsel confirmed the cross mark (which is virtually identical to the mark in the application now in dispute) was not being used in blue, and that SCL had been instructed not to use the cross in either red or blue. At that time we independently verified that the cross mark was not used in blue and was used in white and a pink/fuchsia color. For these reasons, BCBSA did not contest the application. We further note that the 2008 specimen submitted for this Registration showed the mark in pink, and that our research indicates that mark was used in a solid green through the Summer of 2014.

Several SCL hospitals are participating in various of BCBSA's Blue Distinction Center (BDC) Programs, including knee and hip replacement, spine surgery, bariatric surgery and cardiac care. All these participation agreements, executed over the past few years, provide that the facilities will not use cross or shield logos containing the color blue. Additionally, numerous SCL hospitals are currently under evaluation for various new BDC designations, and will be deemed ineligible for these designation until the parties are unable to resolve this matter. In fact, we see that one hospital that is now applying for the BDC Program is or was using SCL's newly adopted mark in solid blue.

BCBSA is the owner of famous marks that are over 80 years old, and BCBSA's rights and incontestable registrations extend to not only its Blue Cross design mark with the Vitruvian man, but also to solid blue colored cross marks. And these incontestable registrations cover not only insurance services, but also healthcare delivery services that have been found to be related and confusing similar to services offered by hospitals. In addition to the above concerns regarding the BDC Programs, BCBSA has a duty and great desire to prevent its marks from dilution and likelihood of confusion. BCBSA would like to discuss the above and possibility of an amicable settlement with SCL.

It is somewhat short notice, but Ms. Rolfe and I have availability at 2 pm central tomorrow, if you are interested in talking. Because Ms. Rolfe's availability is limited and subject to change, please let me know as soon as possible if this time would work, and I can circulate call in information. Alternatively, would you provide available times next week in central time.

Thank you,

Emily

Emily J. Barnhart

Associate General Counsel, Brand

BlueCross BlueShield Association

312.297.6158 (ph) / 312.297.5956 (f)

The information contained in this communication is intended only for the use of the addressee, is confidential, and may be attorney-client privileged. If you have received this communication in error, please notify me by return e-mail, and destroy this communication and all copies thereof, including any attachments.